

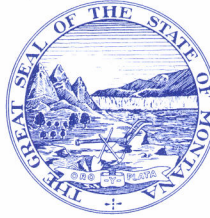
# Montana State Senate

Senate Energy & Telecomm. Comm.

Exhibit No. 6

Date 2/5/13

Bill No. SB 180



*The Big Sky Country*

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TO: MEMBERS – SENATE COMMITTEE ON ENERGY AND TELECOMUNICATIONS

FROM: David E. Wanzenried

In order to ensure that those travelling long distances to testify in favor of Senate Bill 180 are afforded the maximum amount of time to express their points of view, I am submitting my support for the bill in writing.

Senate Bill proposes to repeal House Bill 198, which was enacted in 2011 was characterized as "An Act Clarifying a Public Utility's Power of Eminent Domain; Clarifying That A Person Issued A Certificate Under the Major Facility Siting Act Has The Power Of Eminent Domain, And Providing An Immediate Effective Date And A Retroactive Applicability Date".

From my perspective, it was always the latter "clarification" that was totally inappropriate, not the former.

The first clarification was simply a ploy to try to sell the whole clarification concept that the supporters were simply seeking to ratify and codify the reality of rights which have always existed.

However, everyone knew (or should have known) that the real purpose for this legislation was to grant the power of eminent domain to private utilities constructing private-for profit utility lines.

The grant of this power to private merchant lines was accomplished by authorizing acquisition of property by eminent domain by any person issued a certificate pursuant to the Major Facility Siting Act for construction of a facility having a public use authorized by law.

No definition of the "public use" noted in Section 75-20-113 was included in HB 198. Furthermore, no good argument was ever advanced as to why issuance of a certificate of compliance by DEQ pursuant to the Facility Siting Act should ipso facto carry with it the power of eminent domain. From the outset, the focus of that Act has been to ensure that the location, construction and operation of covered facilities/projects are constructed and operated in accordance with applicable Montana laws----not in any manner to bless and pass on to the applicant the extraordinary legal right of eminent domain to facilitate implementation of a private project.

For that reason, I recommend repealing section 75-20-113 because it should never have been adopted in the first place.

However, I have genuine reservations with respect to the repeal of section 69-3-113. That section specifically incorporates the longstanding provisions of Section 69-3-101 as the basis for defining "public utility" and further provides that the exercise of eminent domain must be "for a public use authorized by law to provide service to the customers of its regulated service."

With the suggested deletion, I recommend the Committee report Senate Bill 180 out of committee with a DO PASS recommendation.